IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERBAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF JUNE

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE V.V.S.RAO

WRIT PETITION NO.14650 OF 1994

Between:

Hotel Ilapuram,

Represented by its Proprietor –

Ilapuram Venkaiah,

Besant Road, Gandhinagar,

Vijayawada-3 ……. **PETITIONER**

AND

1. Vijayawada Municipal Corporation,

Represented by its Commissioner and

Spl. Officer, Vijayawada.

2. Vijayawada-Guntur-Tenali

Urban Development Authority

Represented by its Vice-Chairman,

Vijayawada-2. …. **RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction in the nature of Writ of Mandamus directing the respondents not to interfere with the peaceful possession and enjoyment of the petitioner over the property situated in N.T.S.No.928, Revenue Ward No.8, Municipal Ward No.18, Block No.31 and Assessment Nos.12722 and 12723, Besant Road, Gandhinagar of Vijayawada Municipal Corporation, declaring their action as illegal, ultra vires to the provisions of the Hyderabad Municipal Corporation Act and Urban Areas Development Act and also violative of Articles 14, 19(1)(g), 21 and 300A of the Constitution of India.

For the Petitioner: Mr.V.S.R.Anjaneyulu, Advocate.

For the Respondents 1 and 2: Mr.T.S.Venkataramana, Standing Counsel for Vijayawada Municipal Corporation

The Court made the Following

ORDER:

The petitioner allegedly owns an extent of 2455 Sq.mts in T.S.No.928, Revenue Ward No.8, Municipal Ward No.18, Block No.31, situated at Besant Road, Gandhinagar, Vijayawada. It appears after obtaining necessary permission from first respondent, petitioner constructed a multistoried complex with permissible Floor Area Ratio (FAR) of 1 : 1.5. The petitioner is running a hotel in the building. The petitioner alleges that on 5.8.1994, the officials of the respondents came for verification when the petitioner was not present and alleged that petitioner made construction in contravention and deviation of the plan and directed demolition of the construction. Apprehending coercive action, petitioner invoked jurisdiction under Article 226 of the Constitution of India. He prayed for a direction to the respondents not to interfere with peaceful possession and enjoyment of the property.

This Court while admitting the Writ Petition on 10.8.1994 passed interim orders directing the respondents not to interfere with petitioner’s possession.

First respondent filed a counter affidavit through its Commissioner denying various petition averments. It is categorically stated that officials of the first respondent never visited the site, much less on 5.8.1994, nor contemplated any coercive steps without

regard to procedure contemplated under Hyderabad Municipal Corporation Act, 1955 (HMC Act) and Andhra Pradesh Urban Areas (Development) Act, 1975. The petitioner has not chosen to file a reply notice though the counter affidavit was filed long ago. This leads to presumption that counter averments stand admitted. Be that as it is, as the writ petition is filed on mere apprehension as a preemptive step, this Court cannot grant any relief to the petitioner. It is made clear that if the petitioner has deviated from the plan sanctioned or violated Zoning Regulations, the respondents may initiate action in accordance with Section 42 of the HMC Act or in accordance with Andhra Pradesh Urban Areas (Development) Act.

Subject to above observations, the Writ Petition is dismissed with costs.

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(V.V.S.RAO, J)

23.6.2004

To

1. The Commissioner and Special Officer,

Vijayawada Municipal Corporation,

Vijayawada.

2. Vice Chairman,

Vijayawada-Guntur-Tenali Urban Development Authority,

Vijayawada-2.

3. 2 CD copies.